

# LAW & HEALTH CARE

University of Maryland Francis King Carey School of Law

NEWSLETTER

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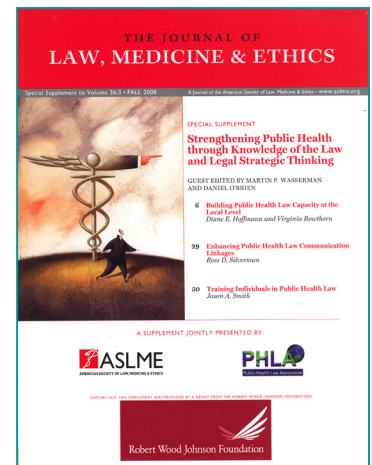
## PUBLIC HEALTH LAW – FROM SCHOLARSHIP TO PRACTICE

### Rewind Four Years . . .

In 2007, the Public Health Law Foundation (PHLA), an association that works to promote healthy communities through education and research in public health law and policy, secured funding from the Robert Wood Johnson Foundation (RWJF) to study the use of public health law at the state and local level. The Co-Presidents of PHLA at that time were former Secretary of the Maryland Department of Health and Mental Hygiene (DHMH) Martin P. Wasserman M.D., J.D. and Daniel O’Brien, J.D., then Chief Counsel at DHMH. Wasserman, a 1977 graduate of UMDLaw, and O’Brien knew from their extensive experience in the field that local public health officials rarely turn to the law as a useful tool in public health efforts. They saw the RWJF grant as a way to study legal capacity on the ground and make recommendations to improve the use of public health law among local officials. Wasserman and O’Brien asked their long-time colleague, Professor Diane Hoffmann, to undertake one of three projects funded under this grant – a study of how best to build public health law capacity at the local level. The paper was one of three commissioned by PHLA, with grant funding from the Robert Wood Johnson Foundation (RWJF), to examine the issue of public health law capacity on the ground. The genesis for the paper was PHLA’s belief that:

*The successes and failures of public health practice are immediately apparent in our towns, cities and counties. On a daily basis, this is where contagious diseases are tracked, water is fluoridated, and many other public health initiatives are implemented. It is in these localities, however, where public health legal capabilities are the weakest. All too often, there is minimal legal support provided to local health officials.*

Hoffmann and Virginia Rowthorn, Managing Director of the University of Maryland Law & Health Care Program, interviewed local health officials and municipal attorneys across the country as well as officials in state and national organizations that represent the interests of these local players such as the National Association of County & City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), and the International Municipal Lawyers Association (IMLA). These interviews revealed a great deal of uncertainty about the law and a vast unmet need among local public health officials for legal advice to promote and



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enforce their public health agendas. Hoffmann and Rowthorn’s research also revealed that many local public health officials (and attorneys) are not clear on the delineation of roles among the various attorneys who could provide legal assistance – local attorneys, county attorneys or state attorneys. Typical of the vignettes collected during the interview process was the following:

*I am currently dealing with a noncompliant homeless person with infectious TB. I would like to keep the person in a restricted environment as he is not showing up to take his meds. Because this is a state issue, I have been working with the state attorney to get an order to isolate the person in restricted housing. The only restricted housing in the state, however, is a state facility, which is full. The state attorney is loathe to write the order as she knows there is no available bed. I suspect an outside attorney would push for a bed and the state would have to find one. If I can’t get the order, this person is at-large. All I can do is appeal to the head of the state health department as he is the only one who has authority to obtain a court order to quarantine this individual.*

The interviews along with research on public health law infrastructure at the local level provided Hoffmann and Rowthorn with background to describe, review and evaluate several possible models for increasing the capacity of local health departments in public health law. These models included delivery of legal services through several state based academic centers, a national legal back up center, government agencies, membership organizations, non-profit organizations and pro bono legal practice groups. In assessing the various models they developed a list of criteria for an “ideal” entity/mechanism for delivering public health legal services.

After applying the criteria to the alternative models, they recommended a series of state-based academic centers with a national coordinating body as the best model for delivering public health legal resources to local public health officials. Hoffmann and Rowthorn noted a successful example of this model that had been used in the tobacco control arena –the Tobacco Control Legal Consortium - which works on the national level with a number of state-based tobacco control centers working at the state and local level.

Hoffmann and Rowthorn, along with the authors of the other two commissioned papers, presented their findings and recommendations at a November 2007 summit organized by PHLA during the American Public Health Association meetings in Washington, DC. A paper based on the study was published in the *Journal of Law, Medicine & Ethics* in 2008 (“Building Public Health Law Capacity at the Local Level,” 36 *Journal of Law, Medicine & Ethics* 6 Supplement 3 (2008)).

***Fast forward four years . . .***

In September 2011, at a public health law conference held in Atlanta, James Marks, Vice President of RWJF, announced a new \$12.5 million dollar investment to create a Public Health Law Network based on the model presented in Hoffmann and Rowthorn’s 2007 paper. The goal of the Network is to increase the use and effectiveness of public health laws in protecting, promoting, and improving public health by helping policy makers apply the law to pressing public health issues. The Network consists of five Regional Headquarters and a National Coordinating Center which are designed to provide public health legal expertise to local, state, federal, and tribal officials and their legal counsel to help develop, implement and enforce laws that solve public health problems. RWJF selected the University of Maryland School of Law to receive a

\$1.3 million grant to operate the Eastern Region of the newly-created Network. Professors Jon Vernick and Lainie Rutkow of the Johns Hopkins Bloomberg School of Public Health are collaborating with the law school on this initiative. The Network is providing legal technical assistance on many public health topics, including food safety, health care reform, and health information data sharing and each Regional Network has been designated to provide front line information on selected topics; for example, the Eastern Region is providing expertise in the areas of environmental health, injury prevention and food safety.

School of Law Associate Professor Kathleen Dachille, who runs the law school's Legal Resource Center for Tobacco Regulation, Litigation and Advocacy, serves as the Director of the Eastern Region. Dachille, who has written extensively on tobacco-related issues, joined the faculty in 2002 after serving for eight years with the Office of the Attorney General of Maryland. Dachille brought on two full-time attorneys to staff the Eastern Region office—Kerri Lowrey and Cristina Meneses. Both Cristina and Kerri are graduates of the law school and Health Law Certificate awardees.

To operationalize the Network's Eastern Region at the law school and to give students the opportunity to develop public health law skills, Professor Dachille did what she does best – involve students by creating a legal clinic to provide concrete assistance to state and local public health officials. The Public Health Law Clinic is a natural expansion of the former Tobacco Control Clinic taught by Professor Dachille. The Tobacco Clinic was originally established in conjunction with the Legal Resource Center for Tobacco



*UMDLaw Professor Kathleen Dachille*

Regulation, Litigation and Advocacy to provide an experiential learning opportunity for law students interested in working on public health policy at all levels of government. The clinic was renamed for the Spring 2011 semester to more accurately describe the wide range of public health law topics and activities in which clinic students engage. These activities include drafting state and local public health legislation; assisting legislators and advocates in support of such legislation or in opposition to legislation that is counter to public health goals; testifying before the Maryland General Assembly or local legislative bodies; meeting with local government officials and community advocates to provide advice or assist with the creation of new public health initiatives or examine new policy options; speaking publicly to groups for the purpose of educating them about legal issues relevant to public health policies; and preparing *amicus curiae* briefs for relevant public health litigation. A more detailed look at what the Public Health Law Clinic appears below.

## NEW PUBLIC HEALTH LAW CLINIC RESPONDS TO NEEDS OF THE COMMUNITY

Students participating in the law school's new Public Health Law Clinic are engaged in a variety of projects designed to respond to the needs of state and local public health officials and lawmakers seeking to address public health problems through law and policy. The clinic, led by Professor Kathleen Dachille, will continue to support the work of the law school's Center for Tobacco Regulation but now also assist with the work of the Public Health Law Network Eastern Region (see article on page 1 about the history of this new initiative). Many of the legal issues that the Network and Clinic will tackle were identified during two day-long meetings of state and local public health officials, their legal counsel, and other regional leaders in public health—one held in Baltimore on December 10, 2010, and the other in Boston on February 4, 2011. These meetings served as a regional public health law needs assessment and provided the first issues taken on by Public Health Law Clinic students. These issues included

marcellus shale hydraulic fracturing or “fracking”, sale of raw milk, medical marijuana, and enhancing information sharing between public health agencies and schools.

### ***Marcellus shale hydraulic fracturing***

A student team is conducting research about the potential environmental and health effects of fracking and identifying policy responses to limit potential harms and ensure that companies that conduct the drilling are financially responsible for those harms. Fracking involves a drilling technique that has made it both possible and profitable to unlock natural gas reserves from deep, rocky geologic formations. Traditional fracking employs vertical drilling but new fracking methods use horizontal drilling to gain access to natural gas deep within the Marcellus shale found in many areas of the country, particularly along the Appalachian basin states comprising much of the Network's Eastern Region. Large quantities of water, sand

*Cont. on page 4*

and chemicals are blasted at the shale, creating cracks and releasing gas that is captured in the well. While there are environmental and economic benefits from gaining access to the natural gas, the process raises serious questions about the impact on the environment and human health. Much of the chemical-laden water that is propelled underground is not recovered, raising concerns about contamination of groundwater. Because federal laws exempt fracking from regulation, regulatory initiatives must emanate from state and local governments. The student team is researching the impact of fracking on watersheds, aquifers, and underground drinking water supplies; identifying scientific experts on the process; and working with policy-makers interested in regulating fracking to develop sound policy responses to the potential harms. Recently, the team provided information to Maryland Delegate Heather Mizeur, lead sponsor of a bill that would regulate fracking in Maryland. Specifically, the students evaluated whether a moratorium or stringent regulations would constitute unconstitutional taking of property and examined existing state and federal laws to determine how a state might fund research on fracking and secure industry funds to cover any harms caused by fracking if permitted. Although the bill failed, the Governor and the Department of the Environment are considering executive branch regulation of fracking. The student team also developed a webinar entitled “Fracking: Is it Just a Dirty Word?”

### **Raw Milk**

Another student is working on understanding and developing policy approaches related to unpasteurized or “raw” milk and cheese made with raw milk. Public health officials warn against drinking raw milk due to the risk of contamination by E. coli and other potentially harmful bacteria that are particularly dangerous for pregnant women, children, the elderly, and people with compromised immune systems. Federal law and many state laws prohibit or severely restrict the sale of raw milk and cheese made with raw milk. Nevertheless, a strong subset of consumers want to purchase and consume raw milk, arguing that it is more nutritious than its pasteurized counterpart. The clinic student is conducting a 50-state survey of existing laws governing the sale and distribution of raw milk, gathering the relevant scientific evidence related to the health impact of consuming raw milk, and proposing policy approaches to raw milk that are based on the science and that respect any existing rights raw milk consumers may have. The student will also track and prepare a legal analysis of an anticipated rule

change from the FDA that would alter certain requirements for cheese made from raw milk. This information will be shared with Network members in an appropriate format.

### **Medical Marijuana**

Several states in the Network’s Eastern Region have raised a concern about how to regulate recently authorized medical marijuana “compassion centers,” and the issue is timely as the Maryland General Assembly considered decriminalizing marijuana for medicinal purposes in its 2011 legislative session. A student team will consider several legal and regulatory matters that arise from legalization of medical marijuana, specifically, how states should regulate medical marijuana use and access to compassion centers; whether zoning laws should dictate location of dispensaries and when smoke-free air laws are implicated; how the state should address restrictions on use of medical marijuana in the workplace in light of the Americans with Disabilities Act and employer drug testing policies; and, if compassion centers distribute marijuana in food items, whether food handling and distribution regulations apply. Clinic students will prepare materials, including issue briefs, fact sheets, and a legal approach “tool kit,” to assist health departments and lawmakers deal with these issues.

### **Schools and Public Health Agencies**

In response to frustration expressed by public health officials at both needs assessment meetings, a clinic student is researching and analyzing several issues related to privacy and confidentiality in state and federal laws that prevent, or at least inhibit, schools from sharing student health information with public health agencies. Access to student health information can be critical to public health officials responding to a health crisis, such as H1N1 or a meningitis outbreak, and determining community health needs. One particular issue the student is addressing is the impact of a 2003 change in the interpretation of the Family Educational Rights and Privacy Act (FERPA), a change that health officials believe has unduly interfered with access to aggregate student health information.

Through these and other exciting projects, students participating in the Public Health Law Clinic will fulfill an important need in public health policymaking and advocacy on the state and local level.

*Kerri Lowrey, J.D., M.P.H.  
Public Health Law Network – Eastern Region*



*Raw milk*

# 2010-2011 HEALTH CARE REFORM SPEAKER SERIES WRAPS UP WITH TALK BY AUTHOR CECI CONNOLLY

In March, the Law & Health Care Program wrapped up its 2010-2011 Health Care Reform Speaker Series with a talk by Ceci Connolly. Connolly is a senior adviser in the McKinsey Center for Health Reform and a nationally recognized journalist, author and television commentator. In her former position as health policy reporter for the Washington Post, she chronicled the enactment of President Obama's Affordable Care Act and went on to be the lead author of "Landmark: The Inside Story of America's New Health-Care Law and What It Means for Us All." In a discussion moderated by UMD Law Professor Leslie Meltzer Henry, Ms. Connolly discussed cost containment in health care in a talk entitled "The Story of Medicare Spending: Why Bending the Cost Curve is So Hard." Connolly focused her presentation on a case study regarding excessive Medicare reimbursement for albuterol, an inhalation drug used to treat asthma and emphysema. She described the difficulty policy makers had trying to ensure that the reimbursement amount paid to providers accurately reflected the actual cost of the inhalation procedure.



Clockwise from top left: Ceci Connolly, Prof. Frank McClellan, Ilya Shapiro and Gillian Metzger, and Joy Pritts.

Other topics and speakers in this year long series were:

- **Health Care Disparities and Health Care Reform**

*Frank McClellan, Temple University Beasley School of Law Professor Emeritus*

Professor McClellan spoke in February about health care disparities and the prospects for addressing such disparities under the Affordable Care Act. Professor McClellan is the Co-Director of the Center for Health Law, Policy and Practice at Temple School of Law and has spent his career fighting for the rights of marginalized groups and promoting diversity and opportunities for minorities in academia, business, government, and health care.

- **The Constitutionality of the Individual Mandate**

*A Debate with Professor Gillian Metzger of Columbia Law School and Ilya Shapiro of the Cato Institute*

Metzger and Shapiro held a lively debate in November about the Patient Protection and Affordable Care Act and whether the legislation's mandate that individuals purchase health insurance exceeds the federal government's power to regulate interstate commerce under the U.S. Constitution. Both Metzger and Shapiro participated in writing amicus briefs that were submitted to the U.S. Court of Appeals for the Fourth Circuit in relation to the *Virginia v. Sebelius* case.

- **Privacy Issues and Health Care Reform**

*Joy Pritts, J.D., Chief Privacy Officer, Office of the National Coordinator (ONC) for Health Information Technology, U.S. Department of Health and Human Services*

Ms. Pritts spoke about her work as the first Executive Branch Chief Privacy Officer and the process underway to develop and implement the ONC's privacy and security programs under the HITECH Act and the Affordable Care Act.

To watch videos of these talks, visit <http://www.law.umaryland.edu/programs/health/reformspeakers/>

# ROUNDTABLE ON ADOLESCENT DECISION-MAKING

*Does alcohol and drug use uniquely affect an adolescent's ability to make decisions about medical care for addiction, and, if so, should clinical and legal standards take this factor into consideration?*

*If an adolescent refuses to discuss his HIV status or seek support from his family, should his medical provider contact the family? If so, what can be disclosed to the family?*

*Should a guardian (or guardian ad litem) be appointed to represent the interests of an adolescent whose parents are seeking non-medically necessary cosmetic surgery for the adolescent?*

These and other discussion questions were on the table during a Roundtable on Adolescent Decision-Making held on April 15 and sponsored by the Law & Health Program at the University of Maryland School of Law in conjunction with the Johns Hopkins Berman Institute of Bioethics. The Roundtable brought together legal and health policy scholars, health care providers and other professionals to discuss adolescent decision-making and the law in three areas – addiction treatment, chronic and terminal disease treatment, and body modification surgery. The goal of the Roundtable was to look at these three areas in which adolescents are called upon to make serious medical decisions to determine whether the law reflects our current understanding of the adolescent decision-making process or whether adjustments to the law are advisable.

The Roundtable developed out of an earlier, smaller Roundtable organized by L&HCP faculty members Leslie Meltzer Henry and Deborah Weimer who joined with faculty members at the Berman Institute to discuss ethical issues relating to children and adolescents facing HIV disease and cancer. The goal of this earlier roundtable was to build on the expertise of clinical faculty and the research of non-clinical faculty to explore a single topic from a range of different perspectives.

The April Roundtable expanded on the themes touched on at the earlier meeting to include the broader topic of adolescent health care decision-making – an issue that is receiving renewed interest due to advances in the field of neuroscience and research relating to high-risk behaviors, addiction vulnerability, and mental illness. As advances are made in the understanding of how teens make decisions, some legal scholars are asking whether the existing legal framework for decision-making is still appropriate. UMD Law Professors Diane Hoffmann, Richard Boldt, Ellen Weber and Amanda Pustilnik joined Meltzer Henry and

Weimer to create the Roundtable and share their expertise in the three focus areas.

Invited speakers included:

- Abigail Baird, PhD, Assistant Professor of Psychology, Vassar College
- Jessie Hill, JD, Professor of Law, Case Western Reserve University
- Margaret R. Moon, MD, MPH, Assistant Professor, Freeman Family Scholar in Clinical Medical Ethics, Johns Hopkins Children's Center
- Lawrence Wissow, MD, MPH, Johns Hopkins Bloomberg School of Public Health
- Marc Fishman, MD, Mountain Manor Treatment Center
- Christine Grady, MSN, PhD, Acting Chief, Department of Bioethics and Head, Section on Human Subjects Research, National Institutes of Health
- Vicki J. Tepper, PhD, Associate Professor of Pediatrics and Director, Pediatric AIDS Program, University of Maryland School of Medicine
- Nancy Hutton, MD, Associate Professor and Medical Director, Harriet Lane Compassionate Care Team, Johns Hopkins Children Center
- Yoram Unguru, MD, MS, MA, Associate Faculty, Johns Hopkins Berman Institute of Bioethics; Attending Physician/Faculty Member, Division of Pediatric Hematology/Oncology, Herman and Walter Samuelson Children's Hospital at Sinai
- Alicia Ouellette, JD, Professor of Law, Albany Law School and Professor of Bioethics at Union Graduate College/Mt. Sinai School of Medicine
- Dr. Richard Pleak, MD, Director of Education & Training, Child and Adolescent Psychiatry; and Associate Professor of Psychiatry, Hofstra North Shore-LIJ School of Medicine
- Dan O'Connor, PhD, Research Scholar, Berman Institute of Bioethics, Johns Hopkins



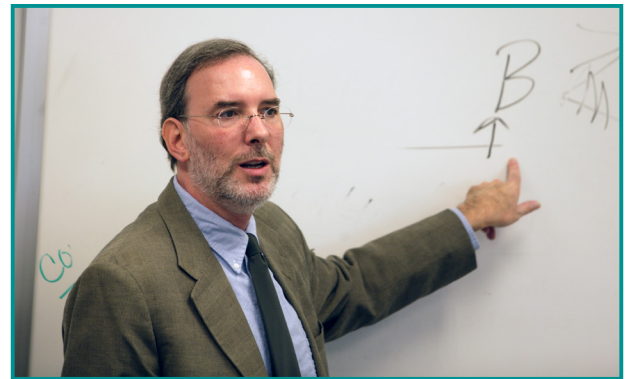
*L&HCP Assistant Professor  
and Roundtable  
Co-Organizer  
Leslie Meltzer Henry*

Articles developed from the talks at the Roundtable will appear in a forthcoming edition of the School of Law's *Journal of Health Care Law & Policy*. The agenda and a video recording of the Roundtable are available at <http://www.law.umaryland.edu/faculty/conferences/detail.html?conf=108>.

# UMD INTERDISCIPLINARY TEAM TACKLES THE ISSUE OF ASSISTED OUTPATIENT TREATMENT

On April 25, 2011, the Law & Health Care Program and the law school's Center for Dispute Resolution, in conjunction with the UMD Schools of Medicine and Social Work, held an interdisciplinary meeting of stakeholders and academics to discuss the emotional and controversial topic of assisted outpatient treatment (also known as "mandatory outpatient treatment" and "civil commitment"). L&HCP Professors Diane Hoffmann, Richard Boldt, Amanda Pustilnik, along with Professor Emeritus Roger Wolf, organized the conference along with co-organizers Dr. Steven Sharfstein, President and Chief Executive Officer of Sheppard Pratt Health System in Baltimore, Dr. Anthony Lehman from the School of Medicine and Dr. George Unick from the School of Social Work. Professors Boldt and Pustilnik also spoke at the conference on the legal framework for assisted outpatient treatment.

Involuntary treatment of persons with mental illness pits public health concerns against concerns for the civil liberties of individuals with mental illness. Involuntary treatment for those who cannot or will not voluntarily comply with their treatment regimen is governed by a process that attempts to balance the clinical needs of individuals, their legal rights, and the safety of the community at large. Some individuals deny that they are ill, are non-compliant with their medications (especially when discharged), and are at high risk for re-hospitalization, homelessness, criminalization, and violence. A number of individuals find themselves in jail or state hospital forensic units for weeks and/or months at a time. Some states permit the use of assisted outpatient treatment (AOT) or other forms of outpatient commitment as a way of helping individuals stay on their medications and attend their psychosocial treatment appointments, in order to prevent re-hospitalization and criminalization. Maryland does not have outpatient commitment or an AOT law. The states that have such laws vary considerably in their willingness and ability to implement and fund necessary community treatment once an individual is placed under a legal requirement to access care.



*UMDLaw Professor and Conference Co-Organizer  
Richard Boldt*

Dr. Marvin Swartz, Professor of Psychiatry at Duke University School of Medicine, provided meeting participants with the results of his research on the effectiveness of AOT in North Carolina and New York, which has the country's most comprehensive and well-funded AOT program. (The program was created under Kendra's Law – named after a woman pushed in front of a subway by a schizophrenic man who was not taking his medication.)

The goal of the conference was to bring together interested stakeholders, including legislators, to learn how AOT works, to evaluate alternative approaches, and to assess whether there is a consensus on a path to improving access to outpatient mental health care in Maryland. A follow up meeting will be held at the law school on June 1 to develop concrete policy recommendations in this area.

Materials from the conference and a link to a video recording of the conference are available at <http://www.law.umaryland.edu/programs/health/events/aot/index.html>.

# PROGRAM HOSTS SECOND STAKEHOLDER MEETING UNDER NIH-FUNDED PROBIOTICS GRANT

On February 3-4, 2011, Diane Hoffmann and a team of researchers at the University of Maryland held the second meeting under a project that is being funded by a grant from NIH's Human Microbiome Project (HMP). The UMB probiotics project is an interdisciplinary collaboration between faculty members from the University of Maryland Schools of Law, Pharmacy and Medicine. The NIH grant is funding a number of meetings to explore regulation of probiotics with a working group of stakeholders and experts including NIH-funded researchers and administrators, food and drug law attorneys, government regulators, legal academics, consumer advocates and industry representatives.

The focus of the first day of the meeting was safety and characterization of probiotics. After a number of presentations on safety and characterization by members of the working group, participants broke into small groups to discuss whether current Food and Drug Administration (FDA) standards for safety and characterization are appropriate to regulate probiotic products in each of FDA's product categories. Participants also made recommendations in areas where they believe FDA's safety and characterization guidelines may not be adequate for probiotics. On the second day of the meeting, participants looked at probiotic product claims from the consumer, patient, industry, and scientific perspectives and considered possible solutions to the problems of both under- and over-regulation of product claims by the FDA and the Federal Trade Commission.

One alternative to the current regulatory framework – a probiotics monograph – was discussed in depth at the meeting. A monograph is a kind of “recipe book” that covers acceptable ingredients, doses, formulations, and labeling for the product covered by the monograph. In the case of FDA monographs, products conforming to a monograph may be marketed without further FDA clearance. The most well known FDA monograph is the over-the-counter drug monograph under which products such as sunscreen can be sold and mar-

keted without premarket approval. Canada regulates certain probiotic products (mostly what Americans would consider dietary supplements) via a probiotics monograph. Working Group member, Daniel Buijs, an Assessment Officer with the Natural Health Products Directorate, Health Products and Food Branch of Health Canada, spoke about Canada's experience with a probiotics monograph. Working Group member and law professor James O'Reilly (Cincinnati College of Law) then presented the case for using FDA's existing OTC drug monograph structure for probiotics. Under his proposal, a probiotics monograph would include a list of active ingredients found to have specific benefits; levels of active ingredients needed to achieve the benefit; product claims that FDA believes fairly communicate that benefit; mandatory warnings for this category of products; purity standards for active ingredients; a listing of permissible excipient and/or inactive ingredients; and methods and standards of testing.

Another issue addressed at the February meeting was an idea developed at the first meeting of stakeholders - an “IND Lite” or an abbreviated approval process for certain probiotics. After the first meeting, Hoffmann and the other researchers formed an IND Lite subgroup to consider whether an abbreviated IND process might make sense for certain probiotic products. This abbreviated process would be one in which phase 1 clinical trials would be formulated differently or waived and research on probiotics in this category could be conducted on non-disease endpoints. The task of the subgroup (still ongoing) is to determine which products would go through an IND lite process; what the IND lite process would look like; and whether such a process could fit in the current statutory framework (or whether it would require statutory change). The subgroup presented their preliminary findings at the February 2011 meeting.

Materials from all the meetings of the stakeholders and other materials relating to probiotics are available at <http://www.law.umaryland.edu/programs/health/events/probiotics/>



*L&HCP Director Diane Hoffmann*





# UMDLAW PROFESSOR TAUNYA BANKS STUDIES THE RELEVANCE OF RACE IN MEDICAL RESEARCH

Taunya Lovell Banks, a faculty member at the University of Maryland School of Law, writes about the use of ethno-race classifications in federally funded biomedical research in a forthcoming article entitled, “Funding Race as Biology: The Relevance of ‘Race’ in Medical Research.” The article, which will appear in the *Minnesota Journal of Law, Science & Technology*, argues that the current regulatory framework relating to the use of ethnicity and race in research should be greatly enhanced at the grant proposal stage to ensure appropriate use of this information in research.

According to Banks, most scientists agree that race and ethnicity (ethno-race) classifications are the result of social and political conditions, as opposed to biological differences. However, there is disagreement about the scientific validity of these categories. A number of scientists use ethno-race as a surrogate for various socioeconomic and environmental factors. Using race as a biological category can reflect and reinforce racial stratification as well as racist notions of inherent human difference. Questions surrounding the appropriateness of ethno-race classifications in medical research have been heightened by two decades

of federal legislation that contains initiatives on minority health. Banks’ article argues that the current regulatory approach used by high impact medical journals and the federal government to discourage misuse of ethno-race comes too late and suggests that a more effective approach is stringent review and clearer standards about the use of ethno-race in biomedical research at the grant proposal stage.

Banks is the Jacob A. France Professor of Equality Jurisprudence at the law school where she teaches constitutional law, torts, and seminars on law in popular culture, citizenship and critical race theory. Prior to entering legal education in 1976, she worked as a civil rights lawyer in Mississippi, litigating voting rights and housing discrimination cases and providing technical assistance to black elected officials.



*Professor Taunya Lovell Banks*

## HEALTH LAW STUDENTS TRAVEL TO HONDURAS

Student volunteers from nearly every professional school at the University of Maryland Baltimore, including second-year health law students Melissa Kim (JD/PharmD candidate) and Michelle Brunner (JD/MPH candidate), traveled to Tegucigalpa, Honduras, in early January as part of a weeklong Global Medical Brigade (GMB) trip where they provided medical and dental services to more than 1,600 Honduran men, women, and children. Spearheaded by pharmacy students and supported by donations from various pharmaceutical companies and fundraisers by trip participants, the group provided approximately 25 suitcases full of medications, medical and dental supplies, and hygiene products to some of the poorest and most isolated areas of Honduras where many residents survive on less than \$2 per day and families do not have access to clean drinking water.

GMB, founded in 2004, annually coordinates programs for university students and professionals through nine skill-based service programs to improve the quality of life in under-resourced communities around the world. GMB provided licensed Honduran clinicians to help the team set up make-shift clinics in rural mountain communities, where patients—some who had traveled more than three

hours—rotated through five different stations: triage, medical, dental, pharmacy, and charlas (“talks”) discussing proper daily hygiene practices. Overall the team pulled 113 diseased teeth, dispensed more than 55,000 multivitamins, and taught almost 100 children how to brush their teeth, along with distributing 1,200 toothbrushes and toothpaste tubes and 1,500 shampoo and soap packets to the local families.

This setup allowed for an interdisciplinary approach toward health care mixing doctors, dentists, nurses, pharmacists and law students. In addition to the clinical experience, the trip also provided the opportunity for students of these different disciplines to work side-by-side and learn from each others’ perspective regarding their academic and professional experiences.



*3L Michelle Brunner*

*-Michelle Brunner 3L and  
Melissa Kim 1L*

# HEALTH LAW STUDENTS “ROUND” WITH UMB PRESIDENT (AND PEDIATRICIAN) DR. JAY PERMAN

University of Maryland Baltimore President Dr. Jay Perman is giving health law students a unique and valuable opportunity to learn about health care in a way that is not usually open to law students—by rounding in a hospital clinic. Dr. Perman is a pediatric gastroenterologist by trade and a devoted proponent of interdisciplinary education in his role as President of the University. Every Tuesday, Perman and nurse practitioner Elsie Stines work through his patient cases with students and professors from the university’s six professional schools—Medicine, Nursing, Pharmacy, Dentistry, Social Work, and Law. In addition to meeting patients and observing Dr. Perman and Nurse Practitioner Stines in action, students have an opportunity to share their thoughts about the cases they see. Dr. Perman then discusses the cases with the students and asks for their comments on the medical, social, and legal issues of each patient’s case. Prior to participating in the clinic, students complete a HIPPA training module. Dr. Perman’s goal is to provide students from different schools the opportunity to learn about other professions and to value the role that each profession plays in helping promote health in the community.

Health law students have thoroughly enjoyed this opportunity to interact with Dr. Perman and develop a greater understanding of the complexities of health care that may not be apparent in the law classroom. Nikki Mitchell, a graduating 3L, commented:

*I was really excited to attend President Perman’s clinic after having been a part of the Law School’s Healthcare Delivery and Child Welfare Clinic. I had been witness to amazing stories resulting from interdisciplinary work. The last of the three patients we saw on the afternoon I went was a teenager with many problems unrelated to her gastrointestinal visit with Dr. Perman. It came out during our time with the patient that the teenager was having a great deal of difficulty having her special education needs met at her school. The mother had attempted to navigate the system alone, thinking she would be able to manage, but was realizing that she needed an advocate to assist her in get-*

*ting her daughter the services she needed. I was able to spend some time with her answering questions and, ultimately, gave her the phone number to a couple of advocacy services that may be able to help her. It was exactly the type of experience I was hoping to get out of the President’s clinic. I am happy President Perman recognizes the effect interdisciplinary work can have on patients and that he supports these types of efforts.*

The experience also had a profound impact on 1L Marshall Jackson:

*Through Dr. Perman’s clinic, I was able to understand his goal of interdisciplinary patient teams. Good patient care is not simply the time a patient spends while under the care of a physician but should include assistance by other professionals if necessary. Hospitals should have in place policies and procedures that ensure appropriate patient care that encompasses more than just physicians. This takes a collaborative effort between many professions and Dr. Perman’s clinic is a transformative and innovative way to spearhead increasing healthcare delivery efforts.*



*Dr. Jay Perman (left) with University of Maryland students*

The law students also add to the experience for the health professional students. Dr. Perman shared with health law faculty member, Diane Hoffmann, that he especially enjoys having the law students at the clinic as they see issues that the health professional students don’t necessarily see and ask questions that many in the medical profession don’t think about because they are used to doing things a certain way. According to Perman, “Our law students remind us that our patients and their families are part of an environment that can affect health and disease. Our patients sometimes need advocacy to influence and improve their environment.”

Law students will continue to participate in the clinic throughout the summer and next year. The clinic was also featured in a Baltimore Sun article at [http://articles.baltimoresun.com/2011-01-04/health/bs-md-umb-presidential-clinic-20110104\\_1\\_perman-pediatric-clinic-students/3](http://articles.baltimoresun.com/2011-01-04/health/bs-md-umb-presidential-clinic-20110104_1_perman-pediatric-clinic-students/3)

# WINTER 2011 HEALTH LAW TRIP TO MISSISSIPPI: ASSESSING HIV/AIDS LEGAL ISSUES

*by Maggie Davis 2L and Lucy Mac Gabhann 2L*



*Students present findings to Mississippi State Delegate John W. Hines, Sr.*

In January 2011, we, along with seven other health law students from the University of Maryland, traveled to Jackson, Mississippi to help the Mississippi Center for Justice (MCJ) conduct foundational research that MCJ will use to create the first HIV/AIDS legal clinic in the Mississippi Delta.

Linda Rigsby, the lead attorney at MCJ, asked us to identify a network of key local players and interview them about legal issues facing individuals with HIV disease. Trip leaders Michael Ulrich 3L and Aaron DeGraffenreidt 2L described the mission as creating building blocks for the clinic—“we identified and spoke to people who can help in different ways—community members, ministers, public health officials, health care providers, and legislators.”

Over four days, we met with a variety of stakeholders in Jackson and in towns throughout the Delta, including Greenwood and Greenville. Throughout our interviews, we noted a number of common themes including privacy violations, workplace and housing discrimination, and a lack of access to healthcare services. Most surprising to us was the pervasive stigma that is still attached to HIV in Mississippi. In almost every story shared, there was a serious concern about the HIV stigma and the fear of being ostracized from the community. People described pastors refusing to baptize HIV positive congregants, families kicking relatives out of the house after learning of their status, and people too scared to pick up their medications at the local health department for fear they would be recognized.

One issue facing Mississippi that nearly all the stakeholders noted is the glaring lack of sex education and STD prevention education in public schools. Of the ten states with the highest incidence per capita of HIV/AIDS, only Mississippi and Louisiana do not statutorily require STD education in public schools. We concluded that this lack of education of young people likely creates a cycle of stigma

and discrimination that is difficult to break.

Between our interviews, we were able to squeeze in some of the Delta’s cultural gems. During a stop in Indianola, we visited the B.B. King museum and got a taste of the background of the blues master. There we also dined at a lunch counter run by a local church. Although none of us dared to try the pig’s feet, we did indulge in their wonderful lemon pie and learned a valuable lesson—never turn down a dessert in Mississippi.

Back in Jackson, we concluded our trip in a written report of our findings which we presented to MCJ staff and Mississippi State Representative John Hinds Sr. Representative Hinds, who hails from the Delta, serves on the House Committee on Public Health and Human Services. He has been a leader in the sponsorship of legislation on HIV/AIDS prevention including comprehensive sex education reform efforts. Both MCJ and Representative Hinds said they hope to use the information from our report to begin addressing the needs of the Mississippi HIV/AIDS community through legislative action.

The opportunity to meet fascinating people, grapple with complex legal and health issues, all while enjoying quintessential Southern food and culture, made the trip unforgettable. As trip co-leader Ulrich put it “You don’t have to wait until after you finish school to help. Three years is a long time to wait but you can start giving back while you are still in school.”

MLSC Health Law participants included 1Ls Brett Baulsir, Maggie Davis, Marshall Jackson, Anna Johnson, and Jennifer Thompson; 2Ls Raquel Bracho, Lucy Mac Gabhann, and Aaron DeGraffenreidt; and 3L Michael Ulrich.

**LAW & HEALTH CARE PROGRAM**

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*Comments and letters should be  
forwarded to the above address.*

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## W. P. CAREY FOUNDATION DONATES \$30M TO UMDLAW



*Francis King Carey (1858-1944)*

On April 25, the W. P. Carey Foundation announced a gift of \$30 million to the University of Maryland School of Law. The gift is the largest in the School's history, one of the top 10 largest gifts to any law school, public or private, and one of the largest in the history of the University System of Maryland. The gift will enable the School of Law to strengthen its programs, with a special emphasis on faculty support, and increase the School's endowment. The School of Law will be named the University of Maryland Francis King Carey School of Law after Foundation founder Wm. Polk Carey's grandfather who was a graduate of the law school (Class of 1880) and co-founder of what is now the largest law firm in the world, DLA Piper (previously Carey, Piper and Hall).

In addition to practicing law, Francis King Carey served for several years as the Editor of the *Civil Service Reformer*, a journal devoted to progressive government ideals. Over a hundred years before it became popular he argued for compulsory health insurance for all Marylanders as a member of the Federated Charities Committee on Health Insurance. The Law & Health Care Program is honored to train future health lawyers and conduct scholarship on some of the same issues embraced by one of the law school's earliest and most prominent graduates.